

June 23, 2011

ALEXANDER R. COATE  
GENERAL MANAGER

Phil Isenberg, Chairman  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Dear Mr. Isenberg:

The Delta Stewardship Council's (Council) efforts to respond to comments on the successive drafts of the Delta Plan are commendable. The East Bay Municipal Utility District (EBMUD) appreciates the attention to our previous comments and the opportunity to offer a few comments on the June 13, 2011 "Fourth Staff Draft Delta Plan." Our comments have been abbreviated in order to submit them to you for your June 23-24, 2011 meeting, anticipating more extensive comments on the Fifth Draft.

EBMUD recognizes the great efforts on the part of the Council and staff to consider carefully the comments submitted by many stakeholders. We appreciate the change in how diversions upstream of the Delta were characterized in the "Current Conditions" section in Chapter 1, with the additional detail on upstream use. Further, we believe that the future development of sustainable financing for the Delta Plan will be greatly aided by the Finance Principles that were added to the Third (and retained in the Fourth) Draft Delta Plan, and hope the Council will be mindful of the balance needed between fairness and administrative expediency in developing a sustainable finance mechanism(s). Identifying all the beneficiaries of the Delta is foundational to assuring a fair system of assessing costs. In this regard, we would also like to reaffirm our support for the proposed Delta Flood Risk Management Assessment District as an appropriate entity to allocate the costs for levee maintenance and improvement on various parties. This could serve as a vital first step in putting the beneficiary pays principle into practice.

We offer specific language changes and explanatory comments in the attachment, and wish to highlight two issues below. On Delta water flow standards, we support the current text of the Fourth Draft, which recommends that the State Water Resources Control Board (SWRCB) update flow standards for the Delta by June 2014, for other high priority rivers by June 2018, and provide an update to the Council on this by June 2013. EBMUD endorses this approach over the Third Draft in which controversial and debatable options were proposed for Council adoption in 2011 to address "what if" the SWRCB misses the June 2014 or 2018 deadline. An update in 2013 seems like a much better time for the Council to carefully consider this issue and potentially amend the Delta Plan, if necessary, rather than trying hastily to solve a difficult "what if" question now.

The Water Supply Reliability of the Fourth Draft has been clarified as compared to the Third Draft. We would like to draw attention to one specific phrase, "net reduction in reliance on Delta exports," as a criterion that will be difficult to interpret or measure consistently across agencies. The ease or difficulty or cost of implementing non-Delta water supply options bears directly on how feasible it is to achieve a net reduction in Delta deliveries over time (aside from the question of a universal baseline). Suggested changes are presented in the attachment for your consideration that focus

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more on measuring increasing quantities of alternative water supplies. The relationship between water transfers transported through the Delta and the "net reduction" term is a separate issue to carefully consider and reconcile if "net reduction" is retained, as transfers are an effective part of many water management portfolios. We believe that more thought should be given to developing a practical framework to promote the development of alternative, non-Delta supplies without supplanting or confusing the role of other state agencies, consistent with the Delta Reform Act.

We will provide more comprehensive comments on the entirety of the Draft Plan that accompanies the Draft Environmental Impact Report in July. We look forward to continuing to support your effort to develop a broadly supported and effective Delta Plan. If you have any questions, please contact Doug Wallace at (510) 287-1370.

Sincerely,



Alexander R. Coate  
General Manager

ARC:DW

Attachment

**East Bay Municipal Utility District Comments  
June 2011 Fourth Staff Draft Delta Plan**

Pg #, line #	Recommended Edits	Discussion
Pg. 44 lines 18-23	<p>Amend lines 18 – 23 as follows:</p> <p>In addition, a proposed plan, program or project must have a “significant impact” under Water Code section 85057.5(a)(4). For this purpose, the Council has determined that a “significant impact” means a substantial <u>or significant effect on change in existing conditions that is directly, indirectly, and/or cumulatively caused by a project and that will affect the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta. Actions that may result in only minor or insignificant impacts on one or both of the coequal goals are not covered actions.</u></p>	<p>The addition of Figure 3-2 is helpful, but the text setting forth the criteria for determining whether an action is a “covered action” continues to set forth a determination process that is inconsistent with the statutory mandate that a covered action must be an action that “will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs.” On page 44, in lines 18 – 23, the text improperly sets forth a two-pronged determination that the Council would use in determining whether an action meets this fourth criteria. This determination incorrectly includes within the definition of “covered actions” any action that results in a substantial change and has an effect on achievement of the co-equal goals or implementation of government-sponsored flood control programs. It is not enough to determine simply that the action will result, either directly or indirectly, in a substantial change in existing conditions and have some effect, even if this effect is insubstantial. In order to be a “covered action,” the action must have a significant effect on achievement of the coequal goals or the implementation of government-sponsored flood control programs.</p> <p>There is also nothing in the statutory language in Water Code section 85057.5(a) or section 85225-85222.25 to support the assertion that actions will fall within the definition of “covered actions” simply because they may result in cumulative effects. In this respect, the text of the Delta Reform Act differs from the text of CEQA, a fact that is recognized elsewhere in the Delta Plan.</p>
Pg. 47, line 13 ...	<p>After line 13, add the following paragraph:</p> <p><u>“The Council may implement a streamlined approach for certification of any covered actions that are short-term in nature or have a brief window of opportunity for implementation. The</u></p>	<p>As recognized in WR R5, water supply projects, including transfers that can be implemented in the next 5 to 10 years to enhance water supply reliability without adversely impacting the co-equal goal of environmental preservation, enhancement and restoration should be encouraged. Current guidelines and approval processes used by the</p>

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	<p><u>streamlined approach would include a compressed timeframe for any appeals of certifications or a waiver of the appeal process in cases where a transfer has been deemed to be a covered action and the transfer is subject to a discretionary approval by other state or federal agencies. A streamlined approach for certification will also be developed to address long-term transfers between contractors of the Central Valley Project and transfers between contractors of the State Water Project that have already been subject to environmental review including the public comment process required under NEPA and/or CEQA.”</u></p>	<p>Bureau of Reclamation for transfers involving Central Valley Project facilities and by DWR for transfers involving State Water Project facilities are comprehensive in terms of environmental impact and efficient use of resources. These reviews should be utilized to the maximum extent practical rather than setting up a potentially duplicative review. The suggested edit will provide the Council with flexibility to implement a streamlined approach for these projects.</p>
<p>Page 47, lines 33-39</p>	<p>Amend last portion of paragraph starting on line 34 as follows:</p> <p>If that consistency certification is not successfully appealed to the Council, a proponent of a project <u>included in</u> <del>contemplated by</del> that plan must still file a certificate of consistency with the Council. However, the Council encourages the project proponent to utilize and rely on relevant information contained in the larger plan’s certification of consistency. <del>Upon appeal, the Council retains the authority to find the specific project inconsistent with the Delta Plan even if the Council finds that So</del> <u>long as the larger plan is consistent with the Delta Plan and there has not been a significant change that would impact the achievement of the co-equal goals or implementation of state-sponsored flood control programs, the Council will find the specific project to be consistent with the Delta Plan .</u></p>	<p>The process for determining the consistency of actions included in a larger plan may result in unnecessary procedural hurdles for actions that are contemplated by plans that are found to be consistent through the use of the certification process. The Plan should establish a process that presumes that an action included within a larger plan that has been found to be consistent is consistent unless there has been a significant change in the underlying situation or the environment.</p>
<p>Pg. 62, lines 37-40</p>	<p>A. The covered action involves the export of water from the Delta or involves the transfer of water through the Delta, and the need for that covered action is significantly caused by the failure of <del>one or more water suppliers</del> <u>the agency receiving that water to</u> comply with policies WR P1, WR P2, and/or WR P3.</p> <p>B. The covered action involves the use of water in the Delta, and the need for that covered action is significantly caused by the</p>	<p>The language in chapter 4 discussing transactions involving transfers could unnecessarily interfere with transfers where the transferee is meeting all state goals and policies regarding efficiency and reasonable water use. This is particularly true for transfers that would not involve exports from the southern portion of the Delta.</p>

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	failure of <del>one or more water suppliers</del> <u>the agency using that water</u> to comply with policies WR P1, WR P2, and WR P3.	
Pg. 63, lines 23-26	The Water Reliability Element shall detail how water suppliers are sustaining and improving regional self-reliance and reducing dependence on the Delta through investments in local and regional programs and projects and shall document actual or projected <del>net reduction in reliance on Delta exports quantities</del> <u>conserved or supplied through local and regional programs that would otherwise have required water to be transferred through or drawn from the Delta.</u>	EBMUD recognizes the importance of increasing regional self reliance. The recommended edits emphasize the broad goal that water districts should increase their emphasis on local and regional programs and reduce their emphasis on supplies that impact the Delta. Measuring the development of alternative, non-Delta supplies should be the focal point rather than an absolute focus on a “net reduction” that will be difficult to assess across differently situated agencies serving different customer bases, across different year types, and without a consensus on the appropriate baseline.
Pg. 63, lines 27-30	Identify how reliable water service will be provided for periods of 6 months, 18 months, and 36 months in the event that diversions or exports from the Delta are interrupted, <u>or the maximum interruption period based on expert analysis and documented in a written report,</u> during an average water year, dry water year, and following three dry water years.	The interruption of water supply and contingency planning is an integral part of an Urban Water Management Plan where alternative water supply and water management strategies during a water shortage are addressed. The length of time before a reliable water supply can be regained varies by agency. EBMUD has studied this issue extensively, as documented in its Water Supply Management Plans for 2020 and 2040, and has made improvements to its local supply system and to the Mokelumne Aqueducts as they cross the Delta such that the maximum outage for the Aqueducts is 6 months. Plans are in place to restore service within 6 months for the most vital components of EBMUD infrastructure.
Pg. 64, line 15	At a minimum, the Water Reliability Element shall include:  An assessment of the long term sustainability of the water supplies available to meet projected demands within the supplier’s <u>applicable Urban Water Management Plan, Agricultural Water Management Plan or Integrated Regional Water Management Plan</u> <del>hydrologic region, as defined by the 2009 California Water Plan Update,</del> over <u>a</u> the 20 year planning period. . . . .	The detailed text proposed in Staff Draft Four does not account for the possibility that an Integrated Regional Water Management Plan may not align with one of the hydrologic regions of the California Water Plan Update or where its data may not precisely align with the 2009 Water Plan Update. The Delta Plan should not be overly prescriptive for IRWM Plan or UWMP standards as those are set by the Legislature and/or the Department of Water Resources. The Council should look to those venues as a place to suggest more detailed standards. Alternatively, the Council could request the 20 year supply-demand balance information as part of a consistency

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		review proposal if a relevant UWMP or IRWMP does not cover the subject in enough detail.
Pg. 168, line 10	Add: "In addition, all beneficiaries of the Delta should be identified as potential payors into a beneficiary pays system for financing implementation of the Delta Plan."	There is a broad range of beneficiaries of the Delta, and while it may not be administratively practical to design and assess commensurate fees on all of them, the Council should carefully investigate how the costs of the Delta Plan might be equitably shared among them.
Pg. 173, line 14	The Legislature should <del>grant</del> require the Council <del>the authority</del> to develop <u>a proposal for</u> reasonable fees for beneficial uses, and <u>for</u> reasonable fees for those who stress the Delta ecosystem, and <u>submit it to the Legislature for approval.</u> <u>Any fee revenues should be applied</u> <del>apply such fees</del> to the operational costs of the Council, the Delta Conservancy, and the Delta Protection Commission to allow implementation of the Delta Plan.	Given the voter approval of Proposition 26 in the November 2010 election, it is preferable for the Legislature to debate and pass any such fee proposals.